IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 45 of 2007
With
CIVIL APPLICATION No. 3250 of 2007

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MADHAVDAS DAMODAR & CO. - Appellant
Versus
STATE OF GUJARAT & 2 - Respondents

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Appearance :
MR ANSHIN H DESAI for Appellant(s) : 1,
RESPONDENTS No 1 – 3 - SERVED

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 03/07/2007

ORAL JUDGMENT

Admit. The Appeal is heard today on question of law framed by order dated 1st March, 2007 (Coram : R.S.Garg, J.).

The appellant, plaintiff in Regular Civil Suit No.445 of 1998, has preferred the present Second Appeal u/s. 100 C.P.C. against the Judgment and order dated 9th August, 2006 passed by the Additional District Judge & Fast Track Court, Junagadh in Regular Civil Appeal No.87 of 1998.

It appears that by order dated 5th July, 1971 made by the District Collector, Junagadh, the appellant – firm was given land admeasuring 33880 sq. yards at Manavadar for establishing a Ginning factory. One of the conditions of the said grant was that the grantee shall not divide the land in sub-plots or sale the land or the sub-plots without the permission of the State Government. In the year 1975 the partnership firm took in some new partners. This was treated by the Deputy Collector as breach of aforesaid condition No.4. A case for breach of condition was registered against the appellant – firm. By order dated 8th February, 1985, made by the Deputy Collector, Porbandar, the appellant was held to be guilty of breach of aforesaid condition No.4 and the land was ordered to be confiscated to the State Government. The appellant preferred Appeal before the District Collector, Junagadh. By order dated 15th November, 1985 the District Collector held that taking new partners by the appellant – firm would not amount to the breach of condition No.4. Nevertheless as new partners were taken without permission of the State Government, though the

District Collector set aside the order of confiscation made by the Deputy Collector, the District Collector imposed penalty upon the appellant firm under clause : 14 of the terms and conditions of the grant. The said order has been confirmed by the State Government on 20th May, 1988 in Revision Application preferred before it. The said order of the State Government was challenged by the appellant firm before the Civil Judge (SD), Junagadh in Regular Civil Suit No.445 of 1988. The said Suit came to be dismissed by the Judgment and order dated 21st July, 1988. The said Judgment dated 21st July, 1988 has been confirmed by the lower Appellate Court vide order dated 9th October, 2006 passed in Regular Civil Appeal No.87 of 1998. Therefore, the present Second Appeal.

Mr. Desai has submitted that the learned Fast Track Judge has materially erred in rejecting the Appeal without recording or deciding the contentions raised in Appeal and without assigning any reason. All that the learned Fast Track Judge has said is that the order of the learned Civil Judge was not illegal.

This Court (Coram : R.S. Garg, J.) had on 1st March, 2007 ordered Notice to issue upon the respondents in following terms :

> **“Issue Notice to the respondents to show cause why the Appeal be not admitted and heard finally on the following substantial question of law :**

Whether on the facts and in the circumstances of the case, the judgment of the first Appellate Court can be accepted to be a legal and valid judgment when the same does not refer to the pleadings and the arguments raised by the parties, nor does it take into consideration the legal position, but, simply observes that the order passed by the Revenue Authorities are just and proper ?"

It is however, made clear that if on this question of law the appeal is not finally disposed of, then the learned counsel for the appellant may be heard in support of the appeal on other questions.

Also issue NOTICE of Civil Application No.3250 of 2007, as an interim measure, it is hereby directed that until further orders from this Court, the parties shall maintain status-quo in relation to the land, as it obtains today."

Inspite of receipt of the aforesaid notice for final hearing the respondents have not entered appearance.

I am in agreement with Mr. Desai. The approach of the learned Fast Track Judge in rejecting the appeal preferred by the appellant herein is perfunctory. The learned Fast Track Judge has not recorded the contentions raised by the appellant firm nor has he considered the points involved in the

appeal nor has he assigned any reason for rejecting the appeal. Such Judgment, of course, can never be sustained in this Appeal before this Court.

For the aforesaid reasons the Appeal is allowed with cost. The impugned Judgment and order dated 9th October, 2006 passed by the learned Additional District Judge & Fast Track Court, Junagadh in Regular Civil Appeal No.87 of 1998 is quashed and set aside. The Regular Civil Appeal No.87 of 1998 is restored and remanded to the court below for hearing and decision afresh in accordance with law. Status-quo ordered to be maintained pending this Appeal shall continue to be maintained pending the appeal before the lower Appellate Court.

In view of the above order Civil Application No.3250 of 2007 stands disposed of.

Date : July 03, 2007 (Ms. R.M.DOSHIT, J.)

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